



**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**[Prohibited Transaction Exemption 2021-01; Exemption  
Application No. D-12018]**

**Exemption for Certain Prohibited Transaction Restrictions  
Involving DWS Investment Management Americas, Inc. (DIMA or  
the Applicant) and Certain Current and Future Asset  
Management Affiliates of Deutsche Bank AG (each a DB QPAM)  
Located in New York, New York**

**AGENCY:** Employee Benefits Security Administration, Labor

**ACTION:** Notice of Exemption.

**SUMMARY:** This document is a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). The exemption allows entities with specified relationships to Deutsche Bank AG to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84-14, if certain conditions are met.

**DATES:** This exemption will be in effect for a period of up to three (3) years beginning on April 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Frank Gonzalez of the Department at (202) 693-8553. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On February 12, 2021, the Department published a notice of proposed exemption in the Federal Register at 86 FR 9376, for certain qualified professional asset managers within the corporate family of Deutsche Bank AG (Deutsche Bank), including DWS Investment Management Americas Inc. (DIMA or the Applicant), to continue relying on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84-14 (PTE 84-14 or the QPAM Class Exemption), for up to three years, notwithstanding the 2017 criminal conviction of DB Group Services (UK) Limited (the U.S. Conviction). The Department is granting this exemption to ensure that Covered Plans with assets managed by an asset manager within the corporate family of Deutsche Bank may continue to benefit from the relief provided by PTE 84-14, with the protection of this exemption's additional conditions.<sup>1</sup>

---

<sup>1</sup> For purposes of this exemption, a "Covered Plan" is a plan subject to Part 4 of Title 1 of ERISA ("ERISA-covered plan") or a plan subject to section 4975 of the Code ("IRA") with respect to which a DB QPAM relies on PTE 84-14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84-14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the DB QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

The grant of this three-year exemption does not imply that the Department will grant additional relief for the DB QPAMs to continue to rely on the relief in PTE 84-14 beyond the end of this exemption's three-year term. This exemption provides only the relief specified in the text of the exemption, and only with respect to the criminal convictions or criminal conduct described herein. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA and the Code.

The Department intends for the terms of this exemption to promote adherence to basic fiduciary standards under ERISA and the Code. This exemption also aims to ensure that Covered Plans can terminate relationships in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to terminate the relationship with a DB QPAM. The Department makes the requisite findings under ERISA section 408(a) based on adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to section 408(a) of ERISA and section 4975(c) (2)

of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

#### **Department's Comment**

The Department cautions that the relief in this exemption will terminate immediately if an entity within the Deutsche Bank corporate structure is convicted of a crime described in Section I(g) of PTE 84-14 (other than the judgment of conviction against DB Group Services (UK) Limited for one (1) count of wire fraud, as further defined below) during the Exemption Period. Although the DB QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The Department specifically designed the terms of this exemption to permit plans to terminate their relationships in an orderly and cost effective fashion in the event of an additional conviction, or the expiration of this exemption without additional relief, or a determination that it is

otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

#### **WRITTEN COMMENTS**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. In this regard, the Applicant was given seven days to provide notice to interested persons, and all comments and requests for a hearing were due by March 22, 2021. The Department received two written comments. One commenter raised issues unrelated to and outside of the scope of the proposed exemption. The other commenter was the Applicant. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the exemption, as described below.

#### **Comments from the Applicant**

**I. Revision to Section I(i)(8).** Section I(i)(8) of the proposed exemption provides: "The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the

Department in the event of a switch in the committee to which the Audit Report will be provided.”

Applicant’s Request: The Applicant notes that Section I(i)(8) of the proposed extension requires review and certification of the audit report by a “senior executive officer with a direct reporting line to the highest ranking legal compliance officer of Deutsche Bank.” The Applicant requests that the term “legal” be deleted.

Department’s Response: The Department has revised the exemption consistent with the Applicant’s request.

**II. Revision to Section I(j)(7).** Section I(j)(7) of the proposed exemption provides: “By August 18, 2021, each DB QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a DB QPAM on or after April 18, 2021, the DB QPAM must agree to its obligations under this section I(j) in an updated investment management agreement between the DB QPAM and such clients or other written contractual agreement. . . .”

Applicant’s Request: The Applicant requests that Section I(j)(7) be revised to provide that, for Covered Plans that enter into a written asset or investment management agreement (IMA) on or after August 18, 2021 (rather than April 18, 2021), the DB QPAM must agree to its obligations in an updated IMA.

Department's Response: The Department has revised the exemption consistent with the Applicant's request.

Department's Note: The first sentence of Section I(j)(4) of the proposed exemption read: "Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors."

The Department has revised this sentence for purposes of this exemption, by striking the phrase "with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM." It is the Department's understanding, based on representations from the Applicant, that no other accounts are applicable.

**III. Revision to Section I(k).** Section I(k) of the proposed exemption provides: "Each DB QPAM provides a notice regarding the proposed exemption, along with a separate summary describing the facts that led to the U.S. Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the U.S. Conviction results in a failure to

meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary and Statement must be provided prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. The clients must receive a Federal Register copy of the notice of final exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email that has a link to this exemption)."

Applicant's Request: The Applicant requests that the DB QPAMs have until August 18, 2021 to provide the required disclosures to Covered Plans that enter or have entered into an IMA before that date. The Applicant states that it will be operationally difficult for the DB QPAMs to provide clients with physical copies of the required documents beginning on the effective date of the exemption, given the various system-driven account opening processes utilized among the impacted lines of business. The Applicant states that it is probable that many such prospective clients have already received copies of current account opening agreements, which they are reviewing and will sign and return over the following several weeks or months. These



account opening documents would not include the new exemption materials. The Applicant requests further that a similar period of time be provided for prospective Covered Plan clients that enter into an IMA on or after that date. In addition, the Applicant requests that the DB QPAMs should not fail this condition solely because a Covered Plan refuses to sign an updated IMA.

Department's Response: The Department is revising the exemption, in part, as requested by the Applicant. The Department has revised Section I(k) to allow the DB QPAMs sixty days to provide the required notices, and has revised the exemption to provide that the DB QPAMs will not fail Section I(k) solely because a Covered Plan refuses to sign an updated IMA.

#### **IV. Revision to Section I(m)(1)(ii) of the Proposed**

**Exemption.** Section I(m)(1)(ii) states: "The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of legal compliance for asset management."

Applicant's Request: The Applicant seeks removal of the term "legal" from this condition.

Department's Response: The Department has made the requested revision.

**V. Definition of Covered Plan.** Section II(b) of the proposed exemption defines the term "Covered Plan" as: "A plan subject to Part 4 of Title I of ERISA (an "ERISA-

covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a DB QPAM relies on PTE 84-14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA."

Applicant's Request: The Applicant requests that new language be added to the proposed exemption's definition of Covered Plan, clarifying that a DB QPAM may disclaim reliance on QPAM status or PTE 84-14 where the disclaimer is made in a modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA. The Applicant states that the modification would be made in a bilateral document signed by the client, where the client's attention is specifically directed toward the disclaimer, and where the client is advised in writing what it means to not use the QPAM Exemption.

Department's Response: The Department has added the following new language to the definition of Covered Plan: Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered

plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the DB QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

**VI. Revision to Section II(f).** Section II(f) of the proposed exemption provides that the term "Plea Agreement" means: "The Plea Agreement entered into between DB Group Services and the U.S. Department of Justice, Fraud Section, Criminal Division, on April 23, 2015 in connection with Case Number 3:15-cr-00062-RNC filed in the U.S. District Court for the District of Connecticut, subsequently adjudged by the Court on March 28, 2017."

Applicant's Request: The Applicant requests a revision to Section II(f) of the proposed exemption to clarify that the Plea Agreement was entered into on April 23, 2015, and DB Group Services was sentenced on March 28, 2017.

Department's Response: The Department has revised the exemption consistent with the Applicant's request.

**Other Requested Revisions:** In its comment letter, the Applicant requested: (1) Deletion of the word "certain" from the Section II(a) phrase "any certain current and future, Deutsche Bank asset management affiliates... ;" and

(2) revision of the Section II(c) term "DB Group Services UK Limited" to "DB Group Services (UK) Limited."

Department's Response: The Department has made the requested revisions.

After full consideration and review of the entire record, the Department has decided to grant the exemption, with the modifications discussed above. The complete application file (D-12018) is available in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 12, 2021 at 86 FR 9376.

#### **GENERAL INFORMATION**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility

provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations: the exemption is administratively feasible, the exemption is in the interests of affected plans and of their participants and beneficiaries, and the exemption is protective of the rights of participants and beneficiaries of such plans;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are accurate.

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

### **THREE YEAR EXEMPTION**

The Department is granting this three-year exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Internal Revenue Code (or Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).<sup>2</sup> Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of exemption is issued solely by the Department.

#### **SECTION I. COVERED TRANSACTIONS**

The DB QPAMs, as further defined in Section II(c), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84-14 (PTE 84-

---

<sup>2</sup> For purposes of this three-year exemption, references to section 406 of Title I of the Act, unless otherwise specified, should be read to refer as well to the corresponding provisions of section 4975 of the Code.

14),<sup>3</sup> notwithstanding the "U.S. Conviction" against DB Group Services (as further defined in Section II(a)), during the Exemption Period, provided that the following conditions are satisfied:<sup>4</sup>

(a) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs) did not know of, have reason to know of, or participate in the criminal conduct of DB Group Services that is the subject of the U.S. Conviction. For purposes of this exemption, "participate in" or "participated in" refers not only to active participation in the criminal conduct that is the subject of the U.S. Conviction, but also to knowing approval of the criminal conduct that is the subject of the U.S. Conviction, or knowledge of the conduct without taking active steps to prevent the conduct, including reporting the conduct to the individual's supervisors, and to the Board of Directors;

(b) The DB QPAMs (including their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the

---

<sup>3</sup> 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

<sup>4</sup> Section I(g) of PTE 84-14 generally provides relief only if "[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of" certain felonies including fraud.

criminal conduct that is the subject of the U.S.

Conviction.

(c) The DB QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that "participated in" the criminal conduct that is the subject of the U.S. Conviction;

(d) At all times during the Exemption Period, no DB QPAM will use its authority or influence to direct an "investment fund" (as defined in Section VI(b) of PTE 84-14) that is subject to ERISA or the Code and managed by such DB QPAM with respect to one or more Covered Plan (as defined in Section II(b), to enter into any transaction with DB Group Services, or to engage DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction, or service, may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy Section I(g) of PTE 84-14 arose solely from the U.S. Conviction;

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew, or should have known, would: further the criminal conduct that is the subject of the U.S. Conviction; or cause the DB QPAM or its affiliates to



directly, or indirectly, profit from the criminal conduct that is the subject of the U.S. Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, DB Group Services will not act as a fiduciary within the meaning of section 3(21)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, DB Group Services will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA, or section 4975(e)(3)(B) of the Code, or because DB Group Services employees may be double-hatted, seconded, supervised or otherwise subject to the control of a DB QPAM, including in a discretionary fiduciary capacity with respect to the DB QPAM clients;

(h)(1) Each DB QPAM must continue to maintain, adjust (to the extent necessary), implement and follow written policies and procedures (the Policies). The Policies must require, and must be reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of the corporate management and business activities of DB Group Services;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited

transaction provisions, in each such case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the DB QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The DB QPAM complies with the terms of this exemption; and

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (h)(1)(vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the

noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each DB QPAM must maintain, adjust (to the extent necessary) and implement a program of training (the Training), to be conducted at least annually, for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of

this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code; and

(iii) Be conducted in-person, electronically or via a website;

(i)(1) Each DB QPAM submits to three audits conducted annually by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each DB QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The first audit must cover a 12 month period that begins on April 18, 2021 and ends on April 17, 2022. The second and third audits must cover the 12 month period that begins on April 18, 2022, and April 18, 2023, respectively. Each of the three annual audits must be completed no later than six (6) months after the corresponding audit's ending period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney-client privilege, each DB QPAM and, if

applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; Training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section I(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank, and the DB QPAM to which the audit applies that describes the procedures performed

by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the DB QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) the adequacy of each DB QPAM's Policies and Training; each DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described above. The DB QPAM must promptly address any noncompliance. The DB QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective QPAM. Any action taken or the plan of action to be taken by the DB QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section I(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective DB QPAM

has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a DB QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Exemption Report created by the compliance officer (the Compliance Officer), as described in Section I(m) below as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section I(i)(3) and (4) above;

(ii) The adequacy of the most recent Exemption Review described in Section I(m);

(6) The auditor must notify the respective DB QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the DB QPAM's general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing,

under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the DB QPAM has addressed, corrected, remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report; and a senior executive officer with a direct reporting line to the highest ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department in the event of a switch in the committee to which the Audit Report will be provided;

(9) Each DB QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue, NW, Suite 400, Washington, DC 20210; or by private carrier to: 122 C



Street, NW, Suite 400, Washington, DC 20001-2109. This delivery must take place no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access and inspection is otherwise permitted by law; and

(12) Deutsche Bank must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an accurate explanation of the basis for the substitution or change including an accurate description of any material disputes between the terminated auditor and Deutsche Bank or any of its affiliates;

(j) As of April 18, 2021, with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan, the DB QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA, with respect to each such ERISA-covered plan and IRA to the extent that section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a DB QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84-14 as a result of a violation of Section I(g) of PTE 84-14 other than the U.S. Conviction. This condition applies only to actual losses caused by the DB QPAM's violations.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB QPAM with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of PTE 2017-04, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that

such fees are applied consistently and in like manner to all such investors; and

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms. To the extent consistent with Section 410 of ERISA, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank, and its affiliates, or damages arising from acts outside the control of the DB QPAM; and

(7) By August 18, 2021, each DB QPAM must provide a notice of its obligations under this Section I(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a DB QPAM on or after August 18, 2021, the DB QPAM must agree to its obligations under this section I(j) in an updated investment management agreement between the DB QPAM and such clients or other written contractual agreement. Notwithstanding the above, a DB QPAM will not violate the condition solely because a Covered Plan or IRA refuses to sign an updated investment management agreement. This condition will be deemed met for each Covered Plan that received notice pursuant to PTE 2017-04 that meets the terms of this condition.

(k) Within 60 days of the effective date of this three-year exemption, each DB QPAM provides a Federal Register notice regarding the exemption, along with a separate summary describing the facts that led to the U.S. Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the U.S. Conviction results in a failure to meet a condition in PTE 84-14, to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All Covered Plan clients that enter into a written asset or investment management agreement with a DB QPAM after the date that is sixty days after the effective date of this exemption must receive a copy of the notice of the exemption,, the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM. The notice may be delivered electronically (including by an email that has a link to this exemption). Notwithstanding the above, a DB QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(1) The DB QPAMs must comply with each condition of PTE 84-14, as amended, with the sole exception of the violation of Section I(g) of PTE 84-14 that is attributable to the U.S. Conviction;

(m) (1) Deutsche Bank continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each twelve month period, beginning on April 18, 2021, (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest ranking corporate officer in charge of compliance for asset management;

(2) With respect to each Exemption Review, the following conditions must be met:

(i) The Exemption Review includes a review of the DB QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter

related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2017-04; any material change in the relevant business activities of the DB QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the DB QPAMs;

(ii) The Compliance Officer prepares a written report for each Exemption Review (each, an Exemption Report) that (A) summarizes his or her material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is

reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Exemption Report; and (D) the DB QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section I(h) above;

(iv) Each Exemption Report must be provided to appropriate corporate officers of Deutsche Bank and to each DB QPAM to which such report relates, and to the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM; and the Exemption Report must be made unconditionally available to the independent auditor described in Section I(i) above;

(v) Each Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates. The Exemption Review for the period April 18, 2020 through April 17, 2021 must be conducted, and completed, under the requirements of PTE 2017-04;

(n) In connection with the deferred prosecution agreement entered on January 8, 2021, between Deutsche Bank and the U.S. Department of Justice, to resolve the U.S. government's investigation into violations of the Foreign



Corrupt Practices Act and a separate investigation into a commodities fraud scheme, no DB QPAMs were involved in the conduct that gave rise to the deferred prosecution agreement, and no Covered Plan assets were involved in the transactions that gave rise to the deferred prosecution agreement;

(o) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the DB QPAM relies upon the relief in the exemption;

(p) During the Exemption Period, Deutsche Bank: (1) immediately discloses to the Department any Deferred Prosecution Agreement or a Non-Prosecution Agreement with the U.S. Department of Justice entered into by Deutsche Bank or any of its affiliates (as defined in Section VI(d) of PTE 84-14) in connection with conduct described in Section I(g) of PTE 84-14 or section 411 of ERISA; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(q) Each DB QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary

Policies) which accurately summarizes key components of the DB QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.<sup>5</sup> With respect to this requirement, the description may be continuously maintained on a website, provided that such website links to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan; and

(r) A DB QPAM will not fail to meet the terms of this exemption solely because a different DB QPAM fails to satisfy a condition for relief described in Sections I(c), (d), (h), (i), (j), (k), (l), (o) and (q) or, if the independent auditor described in Section I(i) fails a provision of the exemption other than the requirement described in Section I(i)(11), provided that such failure did not result from any actions or inactions of Deutsche Bank or its affiliates.

## **SECTION II. DEFINITIONS**

(a) The term "U.S. Conviction" means the judgment of conviction against DB Group Services (UK) Limited (DB Group

---

<sup>5</sup> In the event the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

Services), entered on April 18, 2017, by the United States District Court for the District of Connecticut, in case number 3:15-cr-00062-RNC, for one (1) count of wire fraud, in violation of 18 U.S.C. § 1343. For all purposes under this exemption, "conduct" of any person or entity that is the "subject of [a] Conviction" encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in case number 3:15-cr-00062-RNC.

(b) The term "Covered Plan" means a plan subject to Part 4 of Title I of ERISA (an "ERISA-covered plan") or a plan subject to section 4975 of the Code (an "IRA"), in each case, with respect to which a DB QPAM relies on PTE 84-14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84-14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84-14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84-14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the

disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the DB QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84-14.

(c) The term "DB QPAM" or "DB QPAMs" means DWS Investment Management Americas, Inc., and any current and future, Deutsche Bank's asset management affiliates that qualify as a "qualified professional asset manager" (as defined in Section VI(a) of PTE 84-14),<sup>6</sup> and that rely on the relief provided by PTE 84-14, and with respect to which Deutsche Bank is an "affiliate" (as defined in section VI(d)(1) of PTE 84-14). The term "DB QPAM" excludes DB Group Services.

(d) The term "Deutsche Bank" means Deutsche Bank AG, a publicly-held global banking and financial services company headquartered in Frankfurt, Germany;

(e) The term "Exemption Period" means the three year period from April 18, 2021 and ending on April 17, 2024;

(f) The term "Plea Agreement" means the Plea Agreement entered into between DB Group Services and the U.S. Department of Justice, Fraud Section, Criminal Division, on April 23, 2015 in connection with Case Number

---

<sup>6</sup> In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

3:15-cr-00062-RNC filed in the U.S. District Court for the District of Connecticut, subsequently adjudged by the Court on March 28, 2017.

EFFECTIVE DATE: This exemption will be in effect for up to three years, beginning on April 18, 2021.

Signed at Washington, DC, this 9th day of April, 2021.

---

Christopher Motta,  
Chief, Division of Individual  
Exemptions,  
Office of Exemption  
Determinations,  
Employee Benefits Security  
Administration,  
U.S. Department of Labor.

[FR Doc. 2021-07963 Filed: 4/16/2021 8:45 am; Publication Date: 4/19/2021]